

POLICY NOTE

THE INQUIRIES INTO FATAL ACCIDENTS AND SUDDEN DEATHS ETC. (SCOTLAND) ACT 2016 (COMMENCEMENT No. 2, TRANSITIONAL AND TRANSITORY PROVISION) REGULATIONS 2016

SSI 2016/370 (C. 34)

The above instrument is made in exercise of the powers conferred by section 42(2) and (3) of the Inquiries into Fatal Accidents and Sudden Deaths etc. (Scotland) Act 2016 (“the Act”) and is not subject to any Parliamentary procedure.

Background

The Act received Royal Assent on 14 January 2016. It provides a framework for the implementation of most of the recommendations of the Review of Fatal Accident Inquiry (FAI) Legislation carried out by Lord Cullen of Whitekirk. The overarching aim of the Act is to reform and modernise the law governing the holding of FAIs in Scotland.

Policy objectives

These Regulations bring into force certain provisions of the Act which require to be commenced before the remainder of the Act. The provisions will come into force on 1 December 2016. The principal measures commenced by these Regulations are the removal of the link between the sheriffdom in which the death took place and the location of the FAI, in order to permit the FAI to be held in any sheriffdom, along with provision to permit a single FAI to be held into multiple deaths if they occurred in the same accident or in the same or similar circumstances. The Scottish Government considers that the benefit of these new flexibilities should be available as soon as possible, and in advance of full commencement of the Act.

The policy objectives relating to the Act are fully described in the Policy Memorandum which accompanied the Bill for the Act (“the Bill”). The link below shows the passage of the Bill through Parliament and includes the Policy Memorandum.

<http://www.parliament.scot/parliamentarybusiness/Bills/87332.aspx>

Day appointed

Regulation 2 specifies 1 December 2016 as the appointed day on which sections 13 and 14 come into force.

Section 13 provides that an FAI may be held in any sheriffdom in Scotland regardless of the place of the death or (if applicable) any accident causing the death. This removes the requirement of a close connection between the place most closely connected with the circumstances of the death and the procurator fiscal for the sheriff court district relating to that place that is provided by section 1 of the Fatal Accidents and Sudden Deaths Inquiry (Scotland) Act 1976 (“the 1976 Act”). This allows greater flexibility in the system of FAIs which may allow FAIs to be held more quickly if they can be accommodated in alternative

accommodation. This flexibility still permits an FAI to be heard locally in relation to the circumstances of the death and indeed it is expected that the majority of FAIs will be held in the same sheriffdom as the place of death.

Section 14 of the Act permits a single FAI to be held into multiple deaths if they are as a result of the same accident or occur in the same or similar circumstances. The 1976 Act only allows FAIs into multiple deaths that occur in the same sheriffdom. This provision, along with section 13, means that one FAI may take place into multiple deaths regardless of the place where the deaths took place.

Transitional provision

Regulation 3 contains transitional provision to apply sections 13 and 14 of the Act to FAIs held under the 1976 Act applied for on or after the date on which these Regulations come into force. This is because FAIs continue to be held under the 1976 Act until such time as the remainder of the Act is brought into force.

Transitory provision

Regulation 3 also contains transitory provision modifying sections 1 and 1A of the 1976 Act to essentially remove (for the purposes of the transitional provision) those provisions which specify the existing sheriffdom link.

Future commencement regulations

Further commencement regulations will bring into force the remaining un-commenced provisions of the Act. Many of the recommendations of the Review will, however, be implemented by rules made by act of sederunt under the power in section 36 of the Act as they concern matters which either do not require primary legislation or are more appropriately set out in rules as they concern the routine organisation and procedure of FAIs. Section 36 replaces the power to make rules for FAIs in section 7 of the 1976 Act. It gives the Court of Session a broad power to make Acts of Sederunt concerning the procedure and practice to be followed in FAI proceedings.

While the Act therefore provides the framework for FAIs in Scotland, the detail of procedure will be provided in rules of court set out in an act of sederunt. The Act cannot therefore be fully commenced until those rules are also ready to be brought into force.

Lord Cullen recommended in his Review that there should be a comprehensive, self-contained set of rules for FAIs. He pointed out that at present the rules of evidence and procedure for FAIs are found in three places: the 1976 Act, the Fatal Accidents and Sudden Deaths Inquiry Procedure Rules 1977 (as amended) and the rules for ordinary civil causes in the sheriff court. He did not think it appropriate that rules applying to ordinary civil actions should apply to FAIs since they may not be compatible with the legislation.

A working group of the Scottish Civil Justice Council is currently working to produce the kind of bespoke rules for FAIs envisaged by Lord Cullen for approval by the Court of Session as an act of sederunt. It is expected that the draft rules will be ready for final approval by the Council at its meeting in March and, if final approval is given, the 2016 Act,

the rules of procedure under section 36 and the section 104 Order referred to below will all come into force on 1 May 2017.

<http://www.scottishciviljusticecouncil.gov.uk/committees/scjc-working-group>

An Order under section 104 of the Scotland Act 1998 is also required to fully implement the Act. Amongst other things the Order will make it clear that, for the first time, deaths of service personnel while on active duty in Scotland will result in a mandatory FAI. The Order will also extend to the rest of the UK publishing restrictions in relation to a child's identity and extend provisions on those parts of the continental shelf which are subject to Scots law. The draft Inquiries into Fatal Accidents and Sudden Deaths etc. (Scotland) Act 2016 (Consequential Provisions and Modifications) Order 2016 which has been laid before the Westminster Parliament can be found at:

<http://www.legislation.gov.uk/ukdsi/2016/9780111150290/contents>

Consultation

The Crown Office and Procurator Fiscal Service have been consulted. No formal consultation has taken place on the Regulations as they are being made as a consequence of the Act which has already been the subject of a consultation exercise.

The Government consulted on the Bill in the summer of 2014. The consultation can be viewed on the Scottish Government website at:

<http://www.gov.scot/Publications/2014/07/6772>

The analysis of consultation responses can be viewed on the Scottish Government website at:

<http://www.gov.scot/Publications/2014/11/2861>

Impact assessments

An Equality Impact Assessment (EQIA) for the Bill was published on the Scottish Government website at <http://www.gov.scot/Publications/2015/04/6163> and the Bill was found to have no significant effects in relation to the protected characteristics.

No other impact assessments are required in respect of these Regulations.

Financial effects

Responses to the consultation and meetings with stakeholders indicated that the Bill would have only a minimal financial impact on organisations. Business or consumer groups did not respond to the consultation despite being sent a notification. It is assumed that they consider that they will not be affected by the Bill.

A Business and Regulatory Impact Assessment (BRIA) was not considered necessary because changes in the Bill to the current system will not affect business except in the very exceptional circumstances that they may be obliged to respond to a sheriff's recommendation. Any additional costs for public sector organisations will also only relate to responding to sheriffs' recommendations.

The regulations could lead to modest financial savings through being able to combine FAIs into multiple deaths, particularly if the deaths occur in different locations, and in terms of being able to choose a venue for the FAI which may be more readily available and suitable than the local sheriff court.

Scottish Government
Courts Reform Team
Civil Law and Legal System Division
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